



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable J. T. McMillin
Deputy Banking Commissioner
Department of Banking
Austin, Texas

Dear Mr. McMillin:

Opinion No. 6-3004

Re: Power of the Banking Board
to rescind its resolution
granting the charter to a
State bank under facts
stated.

We beg to acknowledge receipt of your letter
of January 10, 1941, submitting the following for an
opinion:

"On the 17th day of September, 1940, a number of individuals filed application with me as Banking Commissioner, requesting the granting of a bank charter under the name of The Broadway Bank, Alamo Heights, Texas. The fees in connection with this application were paid and an investigation was made by me as Banking Commissioner. After making this investigation, I made a report to the Banking Board and on the 6th day of November, 1940, the Banking Board, pursuant to this application, passed a resolution purporting to grant the charter as applied for. However, no copy of the charter was ever delivered to the bank or its incorporators and no Certificate of Authority was ever issued or delivered. I am advised that the bank never opened for business and incurred no liabilities except those listed in the attached affidavit, which liabilities have been released as shown by the attached letter signed by the creditors named.

"The stockholders of the bank have unanimously agreed not to accept the charter as

granted and have requested that the resolution of the Banking Board be rescinded.

"It is the purpose of the incorporators to apply for a bank charter under the National Banking Act and it is their desire, if possible, to avoid liquidating proceedings as provided for under Articles 539 and 540.

"In view of the above facts, please advise me whether or not it is within the legal authority of the Banking Board to rescind its resolution granting such charter, and thereby revoke such charter and enable the incorporators to recover the capital paid in by them under the application for charter."

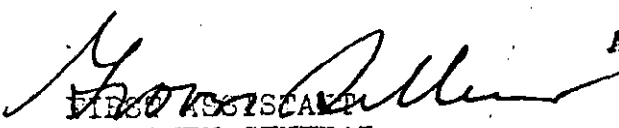
It is our opinion that the Banking Board does have the authority to rescind its action in authorizing the charter for the Broadway Bank, Alamo Heights, Texas, under the facts stated by you.

Ordinarily, the official action of an executive or administrative officer or board of the State may be modified or even rescinded by such functionary, in the absence of some vested right having attached by reason of such act. It is only where rights of private parties have become vested that such agencies or successors in office are forbidden to revoke such action. Laidlaw Bros. v. Marrs, 273 S. W. 789. The executed instruments referred to by you as being attached are not attached; however, we are assuming the facts to be as stated by you.

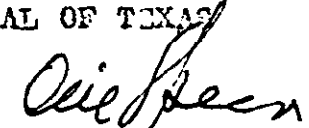
APPROVED JAN 22, 1941

Very truly yours

ATTORNEY GENERAL OF TEXAS


DIRECTOR
ATTORNEY GENERAL

By


Ocie Speer
Assistant

OS-MR